UNITED STATES DISCTRICT COURT
FOR THE MIDDLES DISTRICT OF FLORIDA
TAMPA DIVISION

TONYA ESTEVEZ **CASE # 8:20-cv-01562-CEH-CPT**
FERNANDO CESPEDES
DOMENIC DIFANTE,
et al
Plaintiffs/Petitioners,
v.

HILLSBOROUGH COUNTY, FLORIDA,
Defendant/Respondent.
_____/

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

COMES NOW the Plaintiffs, TONYA ESTEVEZ, et al., ("Plaintiffs") and by and through the undersigned counsel and pursuant to Rule 65(b), Fed.R.Civ.P., and Local Rule 4.06, hereby move this Court to enter a Preliminary Injunction, enjoining Hillsborough County from enforcing or attempting to enforce Executive Orders from the Emergency Policy Group of Hillsborough County, in whole or in part, against Plaintiffs pending the trial on this matter, and as grounds wherefore would show:

MEMORANDUM OF LAW

A. CONSIDERATIONS FOR THE ISSUANCE OF PRELIMINARY INJUNCTIVE RELIEF

Plaintiffs incorporate herein by reference each and every allegation contained in Plaintiffs' Consolidated Amended Verified Plaintiffs; Emergency Complaint for Declaratory and Injunctive Relief with Incorporated Motion for Temporary Restring Order and Memorandum of Law against the Defendant, Hillsborough County (the "Complaint").

A preliminary injunction should be granted where there is a showing of (1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, (2) the substantial likelihood of success on the merits, (3) that the threatened injury to petitioner outweigh any possible harm to the Government, and (4) that the granting of the preliminary injunction will not disserve the public interest. See *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008) (listing the standard for preliminary injunctions); *eBay Inc. v. MercExchange, L.L.C.,* 547 U.S. 388, 391 (2006) (listing the standards for permanent injunctions). These considerations apply to the issuance of a preliminary injunction, usually an emergency procedure to maintain the status quo that existed ***prior*** to the issuance of the offending and unconstitutional Executive Orders until a permanent injunction hearing can be held.

In this submittal, the Plaintiffs set forth a substantial and sufficient basis to show that each of these separate criteria is met and the facts and law set forth herein clearly justify the preliminary injunctive relief sought.

B. THE ENFORCEMENT OF THE CHALLENGED EO HAS CAUSED AND IS CAUSING PLAINTIFFS IRREPARABLE HARM AND PLAINTIFFS HAVE NO ADEQUATE REMEDY AT LAW

The Plaintiffs in this action are residents who seek judicial review, due to the unlawful powers to legislate being exercised by the EPG in violation of Florida's Delegation Doctrine, the unconstitutional nature on how the EPG is established in violation of the Separations of Powers Doctrine, and the vague nature of the EO, inter alia.

The pertinent portions of the EO, all of which point to its unconstitutionality even if legislative authority to the EPG was Constitutional, are set forth in the following sections, but the bottom line is that the County, with no authority and on the basis of a completely unconstitutional scheme, has now put Plaintiffs on the precipice of being taken into the custody of law enforcement,

in violation of their civil liberties, for otherwise lawful activities, with no adequate legal remedy. Additionally, there is no end to the EPG's ability to repeat enactment of laws that violate the Plaintiffs' rights and liberties.

The EPG EO manifests a clear and present threat to the civil liberties of Plaintiffs' resulting in several forms of irreparable harm, vastly exceeding any form of harm simply compensable with money damages. The most egregious form of the irreparable harm occasioned by the challenged EO is found in the loss of constitutional rights and freedoms manifest in the Plaintiffs' rights to engage in the conduct of their lives without excessive government interference with Orders that have no nexus to the goals they attempt to achieve. In every case, the EO is not narrowly tailored, as portions of the EO applies to just "business operators" within Hillsborough County, and fails to obtain the compelling interest it asserts in order to violate the constitutional right of the citizens of Hillsborough County.

The Plaintiff's rights and freedoms include, generally, and the right to earn a living and enjoy the fruits of one's labors, as well as the ownership and use of private property without undue governmental interference. The loss of any constitutional right or freedom, in and of itself, constitutes irreparable harm. See *Tampa Sports Authority v. Johnston,* 914 So.2d 1076 (Fla. 2d DCA 2005). Even more importantly, the loss of customers for business impacted adversely by the EO, and the loss of business goodwill and threats to a business' vitality are also irreparable harm, all of which clearly justify injunctive relief. In addition, as explained below, the coercive measures to compel government impose speech at the risk of civil and criminal sanction, as an aspect of this EO, is not defensible under our Constitution as defined by our Supreme Court.

The irreparable harm described *infra* is th e direct result of the threatened enforcement of the EPG EO, and the application of the unconstitutional provisions of the order against Plaintiffs.

Plaintiffs have no adequate remedy at law because there is no plain, certain, prompt, speedy, sufficient, complete, practical, or efficient way to attain the ends of justice without enjoining *immediately* the threatened enforcement of the EO. Relief is sought on the basis of the likelihood of success set forth in the arguments in that section. Plaintiffs have met this requirement for the issuance of an injunction against the enforcement of the unconstitutional EO.

C. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS INVALIDATING THE CHALLENGED LEGISLATION

The next consideration in evaluating the grant of injunctive relief is whether the party seeking the injunction shows a substantial likelihood of success on the merits. In the instant action, Plaintiffs can and will show numerous grounds supporting the relief requested, any one of which would be sufficient to justify the injunctive relief sought herein, and all of which clearly establish that the challenged legislation is invalid and unconstitutional.

1. THE EPG VIOLATES FLORIDA'S DELEGATION DOCTRINE

In its present form and under authorities given in the County Code Chapter 22, the EPG has displaced the BOCC's legislating authority, and all Executive Orders and legislative type issuances by the EPG should be declared constitutionally void.

The EPG was delegated legislative powers under County code Chapter 22, Section 22 by the County BOCC where such powers are lawfully vested in the County BOCC by the Florida Constitution, associated Statutes, and the County Charter. Local governments are considered arms of the Florida state legislature. Authority for County governments is granted by Article VIII, § 1 of the Florida Constitution, Florida Statute §125.01;125.011 and 125.66. Chapter 252, Florida Statutes authorizes emergency operations by local governments without rescission or change to legislative authority. Hillsborough County enacted Hillsborough County Code of Ordinances and

Laws Chapter 22, Article II, Sections 22-23 in order to protect the health, safety, and welfare of the County's residents during declared emergencies. In this, without any authority, it created a legislative body that replaces the County's BOCC.

Nothing in Fla. Stat. § 252 for emergency management authorizes delegation of law-making to any other entity beside the authorizations to the County Board of Commissioners as contained in the Florida Constitution and relevant Florida statutes above.

The EPG however, is unconstitutionally delegated the legislative authority of the BOCC as vested by the Florida Constitution, Florida Statutes and the County charter. By its very nature, the BOCC is within the legislative arm of State government. Authority is granted by Article 8 of the Florida Constitution, Section 125.66 --- and Chapter 252, Florida Statutes. Hillsborough County enacted Hillsborough County Code of Ordinances and Laws Chapter 22, Article II, Sections 22-23 in order to protect the health, safety, and welfare of the County's residents during declared emergencies.

The EPG, with members unelected as a body of any type, where no citizen in the County may vote to remove every single EPG member from their elective offices which are not associated with the EPG, is acting in the stead of the County's elected government, and within the legislative branch of the State government. In addition to the Sheriff, the EPG includes mayors from Tampa, Temple Terrace and Plant City, the County Administrator who is Chief of the County's Executive branch, and the School Board Director: none of whom can under the most expansive imagination be viewed as being rightfully vested with legislative authority as has happened within our County.

It is on this ground alone, that Plaintiff's have a strong likelihood of success. So much so, that the BOCC voted unanimously on 15 July 2020 to divest the EPG of its authority with regards to this Pandemic, while maintaining its structure to deal with Hurricanes. Notwithstanding this

effort by the BOCC to reign in control of the EPG, the EPG still exists in violation of the Delegation Doctrine, its unconstitutional EO's are still in effect, wreaking havoc across our community, and any attempt to cause this action to become moot is overcome by the continued existence of the EPG and the operative EO.[1]

2. THE EPG AS FORMED VIOLATES THE SEPERATION OF POWERS DOCTRINE AS CONTAINTED IN THE UNITED STATES AND FLORIDA CONSTITUTION

EPG as constituted is in violation of the Florida Constitution in that it allows an unelected body outside the County Board of Commissioners, including a Judicial Officer, the County Sheriff, and three Mayors, to enact laws in a legislative capacity.

The Florida Supreme Court recognize non-delegation and separation of powers doctrines as expressly set forth in the Florida Constitution that prohibit legislative delegation to another

[1] When a party seeks to escape liability by claiming that it has voluntarily ceased the offending conduct, as Defendant is anticipated to asserts here, "the heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party" seeking to avoid liability. *Adarand Constructors, Inc. v. Slater,* 528 U.S. 216, 222 (2000) (internal quotations and citation omitted) (italics in original) (emphasis added). As the Court noted, not only is a defendant "free to return to his old ways," but also the public has an interest "in having the legality of the practices settled." *United States v. W. T. Grant Co*., 345 U.S. 629, 632 (1953) (emphasis added); see also City of *Mesquite v. Aladdin's Castle, Inc*., 455 U.S. 283, 289, n. 10 (1982). Consequently, "[a]long with its power to hear the case, the court's power to grant injunctive relief survives discontinuance of the illegal conduct." *W. T. Grant Co*., 345 U.S. at 633.

The Supreme Court has also instructed the lower courts to be particularly vigilant in cases such as this, warning that "[i]t is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption." Id. at 632, n. 5. As the Court concluded, denying a plaintiff prospective relief "would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that it sought." *Adarand Constructors, Inc*., 528 U.S. at 224 (emphasis added). The Sixth Circuit's ruling in *Speech First, Inc. v. Schlissel*, 939 F.3d 756 (6th Cir. 2019), in which the court found that the plaintiff's challenge to a university's speech restriction was not moot, is controlling here.

> While all governmental action receives some solicitude, not all action enjoys the same degree of solicitude. Determining whether the ceased action "could not reasonably be expected to recur," . . . takes into account the totality of the circumstances surrounding the voluntary cessation, including the manner in which the cessation was executed. Where the government voluntarily ceases its actions by enacting new legislation or repealing the challenged legislation, that change will presumptively moot the case unless there are clear contraindications that the change is not genuine. . . . On the other hand, where a change is merely regulatory, the degree of solicitude the voluntary cessation enjoys is based on whether the regulatory processes leading to the change involved legislative-like procedures or were ad hoc, discretionary, and easily reversible actions.

branch, and encroachment by one branch on the functions of another. The doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. See, e.g., *Pepper v. Pepper*, 66 So. 2d 280 (Fla. 1953). The second is that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, etc*, 589 So. 2d 260 (Fla. 1991). The case at bar involves a compelling example of the first form of interference that happened only a few months ago, through the Sheriff, as Judicial officer, enacting criminal statutes (e.g. Safer-at-Home order March 27, 2020) and then using that same order to make a high profile arrest of the Pastor of the River Church on said order (Pastor Ronnie Browne). Such action resulted in Pastor Rodney Howard-Browne being prosecuted and whose case was eventually nolle prose by the State Attorney (see Case # 2020CM3048).[2]

The EPG's existence, under its given powers, where the BOCC unconstitutionally delegated legislative authority in violation of the non-delegation doctrine concurrently violates Separation of Powers. All executive orders and laws issued by the EPG are constitutionally void. The Sheriff and Mayors each have a duty to enforce both the Florida Constitution and Florida state laws and statutes, and to provide for the security, safety and well-being of County citizens. This

[2] The Florida Supreme Court has explained Florida's strict separation of powers doctrine as follows:

> The cornerstone of American democracy known as separation of powers recognizes three separate branches of government-the executive, the legislative, and the judicial-each with its own powers and responsibilities. In Florida, the constitutional doctrine has been expressly codified in article II, section 3 of the Florida Constitution, which not only divides state government into three branches but also expressly prohibits one branch from exercising the powers of the other two branches:
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> Branches of government. —The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.
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> 'This Court . . . has traditionally applied a strict separation of powers doctrine' [citation omitted], and has explained that this doctrine 'encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power' [citation omitted]. [Emphasis added.] *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004); see also Diaz v. State, 945 So. 2d 1136, 1143 (Fla. 2006).

is accomplished through the delivery of law enforcement services, the operation of the County Jail, and the provision of court security. As noted, the Office of the Sheriff functions as the Executive Officer of the court. Under Florida law, the Sheriff derives his legal authority from the Constitution of the State of Florida. The Sheriff is vested with the ability to appoint and direct deputies who will act in his name and office to enforce the appropriate and applicable laws of the State of Florida. Likewise, the Mayor's serve as the Chief Executive of their respective municipalities. Vested with great authority, they have the responsibility to ensure that their respective police departments enforce statutes and ordinances within their respective jurisdiction.

Accordingly, the fact that the Hillsborough County Sheriff and the Mayors of the local city governments are voting member of this board empowered to enact orders subject to prosecution in a County Criminal Court violates the Florida and Untied States Constitution separation of powers doctrine. Because of the unconstitutional delegation of legislative powers given to the EPG, combined with its membership, Plaintiffs have a substantial likelihood of success on the merits and a clear legal right to an injunction against continued operation of the EPG and CH 22 of county code, and the enforcement of the EPG EO, and injunctive relief should issue.

3. THE EPG EO IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD

There are innumerable components of the EPG EO that leave unlimited discretion to County officials whereby the order is impermissibly vague for a "criminal" form of legislation. In addition, the EO requires business owners to determine who and whom to "discriminate" against as a state actor.[3] Wrong decisions that can be second guess could result in criminal penalties.

[3] The EPG EO requires business operators to determine who qualifies under the ADA, or who may have legitimate reasons not to wear a mask based on a medical condition. It is here that they become state actors, although engaged in private conduct. In other instances, in which the discrimination is being practiced by private parties, the question essentially is whether there has been sufficient state involvement to bring the Fourteenth Amendment into play. There is no clear formula. "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance.

The vagueness of the EPG EO at issue further establishes the Plaintiffs' clear legal right to the relief they seek and a substantial likelihood of success on the merits.

a. The EO at issue Violates the Due Process Rights of the Plaintiffs

Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights and Florida Constitution.[4] There are components of the EO that leave unlimited discretion to County officials whereby the order is impermissibly vague and overbroad for the delegation of an Executive Order. The law should apply equally without being open to arbitrary application upon the whim of those enforcing it, should not encompass more activity than required by irrationally precluding the exercise of the rights guaranteed by the U.S. and Florida Constitutions, and should not omit persons and groups such that there can be no rational basis for the "law." The EPG EO should be found void for vagueness in that the order's delegation of authority to police and/or administrators is so extensive that it would lead to arbitrary "plans," and the possibility of arbitrary arrests, fines, revocation of business licenses and prosecutions.

The irreparable harm described above is the direct result of the unconstitutional provisions of the order against Plaintiffs. Plaintiffs have no adequate remedy at law because there is no plain, certain, prompt, speedy, sufficient, complete, practical, or efficient way to attain the ends of justice without enjoining *immediately* the threatened loss of their liberty with no right to even a scintilla of adequate due process.

b. The EO at issue is Unconstitutionally Vague and Overbroad

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[4] See *Duncan v. Louisiana*, 391 U.S. 145, 147–149 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. See, e.g., *Eisenstadt v.Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484–486 (1965).

The vagueness and overbreadth of the Executive Orders at issue further establishes the Plaintiffs' clear legal right to the relief they seek and establishes a substantial likelihood of success on the merits.[5]

The vagueness and overbreadth of the challenged orders are perhaps most exemplified by the excessive provisions in the Executive Orders, which point to other provisions requiring individuals to make legal conclusions about what applies and what does not apply, making it virtually impossible to put anyone on fair notice as to what is allowed or not allowed. [6]

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[5] The United States Supreme Court has ruled on the subject of vague and indefinite statutes and has held that if the act of which a "Governor" (or "any person" who stands accused) had not previously been construed by the State Courts to fall within the activities proscribed by the act, then until after such construction has occurred, no person can be convicted of a crime that is described in indefinite and vague terms:

The basic principle that a criminal statute must give fair warning of the conduct that it makes a crime has often been recognized by this Court. As was said in *United States v. Harris*, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989:

> "The constitutional requirement of definiteness is violated by a criminal statute that fails to gives a person of ordinary intelligence fair notice that his conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.
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> "Thus we have struck down a state criminal statute under the Due Process Clause where it was not 'sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.' *Connally v. General Const. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322. We have recognized in such cases that `a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law," ibid., and that "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey,* 306 U.S. 451, 453, 59 S.Ct. 618, 619, *Bouie v. City of Columbia*, 84 S.Ct. 1697 (1964)

Other courts, including in Florida, have entered similar holdings:

"The ordinance is also unconstitutionally overbroad. By its language the ordinance criminalizes conduct which is beyond the reach of the city's police power inasmuch as conduct "in no way impinges on the rights or interests of others" See *Lazarus v. Faircloth*, 301 F.Supp. 266, 272 (S.D. Fla. 1969); Effective law enforcement does not require that citizens be at the "mercy of the officers; whim or caprice," See *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879, 1890 (1949); "…and the just concerns of the public regarding crime must take rational expression and not become a mindless fear that erodes the rights of a free people" See *Hayes v. Municipal Court of Oklahoma City*, 487 P.2d 974, 980 (Okla.Crim.App.1971). "A penal statute that brings within its sweep conduct that cannot conceivably be criminal in purpose or effect cannot stand.". See *City of Pompano Beach v. Capalbo*, 455 So.2d 468 (Fla. 4th DCA 1984).

[6] Additionally, the cases of *Effie, Inc. v. City of Ocala*, 438 So.2d 506 (Fla. 5th DCA 1983), are instructive in the in this action. In that case, the plaintiff appealed a trial court's ruling that the city code provisions are valid. Effie

For example, just a review of the operative EO will show multiple layers of regulations pointing to other layers. For example, Paragraph 7 makes a rule, except as regulated by paragraph 9 which has over 12 exceptions. Paragraph 8 requires business owners to require individuals "not exempt" to comply with Paragraph 5, at risk of sanction as found in Paragraph 12, which has 6 subsections, but ultimately controlled by paragraph 12f (which makes everything above it moot and at the total discretion of law enforcement).

The Vagueness doctrine rests on the due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. By requiring fair notice of what is punishable and what is not, vagueness doctrine also helps prevent arbitrary enforcement of the laws. Additionally, under vagueness doctrine, an order of this nature is also void for vagueness if an order's delegation of authority to police and/or administrators is so extensive that it would lead to arbitrary prosecutions.

As is here, one is susceptible to prosecution for violations of the EO without ever even showing that they have violated any of the substantive statutory regulations set forth in the operative complaint. This lack of "personal blameworthiness" renders the threatened criminal prosecution of the Plaintiffs entirely unlawful, because of the vague nature of the Executive Order,

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contended that the challenged provisions were invalid because they failed to provide any standards or guidelines upon which the city council may act, thereby permitting the exercise of unbridled discretion by the council, thus denying Effie equal protection of the law. In determining that the ordinance was void for insufficiency of standards upon which the City could exercise its discretionary authority, the Court stated:

> "We think a City Council may not deprive a person of his property by declining a permit to erect upon it a certain type of garage where the only restriction on the use of the police power is that it shall not be exercised before "due consideration" is given by someone, presumably the councilmen, to the effect of the building upon traffic. Both the quoted words, as well as their synonyms, could be construed to allow all manner of latitude in the grant of a permit in one case and the denial of a permit in a similar one, and would give every opportunity for the exercise of the power with partiality.
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> "The present ordinance could easily become such an instrument of discrimination…Clearly, the opportunity for the exercise of unbridled discretion is present here, and whether so exercised or not, renders the ordinance unconstitutional."

and the potential that individual engage in the same exact conduct are subject to differing outcomes depending on the discretion of the arresting officer.

According to the U.S. Supreme Court in *Connally v. General Construction Co*. (1926), a law is unconstitutionally vague when people "of common intelligence must necessarily guess at its meaning."[7] Whether or not the law regulates free speech, if it is unduly vague it raises serious problems under the due process guarantee, which is applicable to the federal government by virtue of the Fifth Amendment and to state governments through the Fourteenth Amendment.

Additionally, the "means selected" of an EO has no reasonable relation to the "object to be attained," if that object is to "prevent the increase in COVID 19 cases". The enforcement mechanism only applies to a small class of individual' s who are likely complying, but subject to penalty for the actions of those who are not subject to the penalties found within the subject EO. As in *Delmonico, Robinson,* and *Walker*[8], the Respondent has chosen a means which is not

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[7] At least three Florida Supreme Court cases have declared Florida statutes unconstitutional on substantive due process grounds. *Schmitt v. State*, 590 So.2d 404, 413 (Fla. 1991); *State v. Walker*, 444 So.2d 1137 (Fla. 2d DCA 1984), aff'd 461 So.2d 108 (Fla. 1984); *State v. Saiez*, 489 So.2d 1125 (Fla. 1986). In Saiez, at 1128 the Court invalidated a statute which prohibited possession of credit card embossing machines under Section 817.63, F.S. (1983). Though the statute had a permissible goal, attempting to curtail credit card fraud, the means chosen, prohibiting possession of the machines, did not bear a rational relationship to that goal. Criminalizing the mere possession of the machines interfered with "the legitimate personal and property rights of a number of individuals who use [them] for non-criminal activities." Id. at 1129. In other words, the statute criminalized activity that was otherwise inherently innocent.

In the *Saiez* case, the Court ruled that the statute violated substantive due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution. The Court stated:
"The due process clauses of our federal and state constitutions establish a 'sphere of personal liberty' for every individual subject only to reasonable intrusion by the state in furtherance of legitimate state interests. *See Del Percio*, 476 So.2d at 202 (quoting from *Richards v. Thurston*, 424 F.2d 1281, 1284 (1st Cir.1970))…

"The due process clauses of our federal and state constitutions do not prevent the legitimate interference with individual rights under the police power, but do place limits on such interference. *State v. Leone*, 118 So.2d 781, 784 (Fla.1960)…"Moreover, in addition to the requirement that a statute's purpose be for the general welfare, the guarantee of due process requires that the means selected shall have a reasonable and substantial relation to the object sought to be attained and shall not be unreasonable, arbitrary, or capricious. See *Nebbia v. New York*, 291 U.S. 502, 525, 54 S.Ct. 505, 510, 78 L.Ed. 940 (1934); *Lasky v. State Farm Insurance Co*., 296 So.2d 9, 15 (Fla.1974); *L. Maxcy, Inc. v. Mayo*, 103 Fla. 552, 139 So. 121, 129 (1931).

[8] As Judge Grimes phrased it in *Walker*, "without evidence of criminal behavior, the prohibition of this conduct lacks any rational relation to the legislative purpose" and "criminalizes activity that is otherwise inherently innocent." 444 So.2d at 1140. Such an exercise of the police power is unwarranted under the circumstances and violates the due

reasonably related to achieving ***any*** legitimate rational purpose. It was unreasonable to criminalize a class of "business operator's", while not applying to "religious organizations, private clubs or nonprofit organizations," or the Government offices, or Public Schools.[9]

While this may be unnoticed as well, the facts on the ground bely the goal of the EO. The facemask EO was passed on June 22, 2020. And yet, four weeks later, more cases of COVID 19 are occurring then before the proscription of this EO that required citizens to wear a mask in public. It does begin to beg the question as to their efficacy. Additionally, it calls into question whether such an EO is rational, when there is little actual science to support it suppositions (e.g. that wearing masks retards the spread of COVID 19. The actual reality is that requiring the public to wear a piece of cloth that does not provide any protection unless one is wearing an M-95 mask, where the EO itself provides numerous exceptions to the rule, is a process that defeats the very rule. Government's should not engage in policy for the sake of being seen to be doing something, in the expediency of politics. The rule of law should not be a victim of politics or COVID 19.

It is not the Government's job to treat its citizens as though they were children, and the elected official are the only adults in the room. It should equally be found unconstitutional to use EOs to limit only the Plaintiffs as the lynchpin to achieve whatever purpose the EO was purportedly designed to advance, since it seems improbable that enforcing these provisions only against the Plaintiffs will have any remedial impact, other than putting honest people out of work and limiting their income.

The subject Executive Orders are vague, contradictory, way overbroad, confusing, capricious and discriminatory, and are perfect examples of an abuse of power that fails the rational

process clauses of our federal and state constitution.

[9] It is unknown whether Private Schools are exempt or not, since some private schools are considered a business.

basis test, and thus violates due process and equal protection of the law. These flaw supports the Plaintiffs request for injunctive relief. It is also for these reasons, that the Executive Order should be found unconstitutionally vague and overbroad. The Executive Order provisions are not minor, and they do violence to the Plaintiffs civil liberties.

4. THE EPG EO IMPOSITION OF A SPEECH CODE IS UNCONSTITUIONAL

The loss of First Amendment freedoms constitutes irreparable injury as a matter of law, *Elrod v. Burns,* 427 U.S. 347 (1976). Consistent with *Elrod,* the Eleventh Circuit has held:

> Regarding irreparable injury, it is well established that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976) (plurality opinion)' *see also Fla. Businessmen for Free Enter. v. City of Hollywood,* 648 F.2d 956, 958 (5th Cir. Unit B June 1981) (quoting *Elrod*). [footnote omitted]. As we held in *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of America v. City of Jacksonville,*
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> [t]he only area of constitutional jurisprudence where we have said that an on-going violation constitutes irreparable injury is the area of first amendment and right of privacy jurisprudence. The rationale behind these decisions was that chilled free speech and invasions of privacy, because of their intangible nature, could not be compensated for by money damages' in other words, plaintiffs could not be made whole. 896 F.2d 1283, 1285 (11th Cir.1990) (citations omitted).

KH Outdoor, LLC v. City of Trussville, 458 F.3d 1261, (11th Cir. 2006).

On July 6, 2020, the EPG amended their EO requiring business owners to make "reasonable efforts" to avoid criminal and civil liability. Specifically, businesses are being required to make announcements to their customers over their intercom systems in order to avoid penalties (paragraph 8 of the amended order). The EO defines reasonable efforts, inter alia, as a busines that places signs at entrances, make public address announcements over their intercom systems that promote government mandated speech that asks customers to comply with this government mandate. The EO specifically ask business to announce that their customers wear

face coverings over their faces while inside buildings if they are unable to maintain social distancing. Obviously, for those who cannot wear masks for a variety of reasons, and who are exempt under the EO, such announcements will lead to confrontations. Such confrontations between citizens have been widely reported. No matter how one slices these government mandated announcements, this is imposed government speech. Failure to commit to making these government-imposed speech requirements risks penalties, to include criminal penalties as laid out in Paragraph 12f of the EO.

While the EPG has indicated that the penalties have been reduced to civil citations; that is not completely true or honest. In point of fact, paragraph 12f makes is clear that "nothing in this paragraph shall prevent law enforcement from enforcing this order…as a second-degree misdemeanor".

This is a pernicious step in an incredibly dangerous direction. It is one thing for the government to impose a dress code on its citizenry in order to go out in public. However, it is entirely different matter for government to impose speech on the general public at the risk of criminal penalties. The Constitution is not suspended when the government declares a state of emergency.

Not every citizen agrees with the message that Government is imposing. While it is important to remember that those who object to these Government compelled speech requirements were imposed by duly elected officials, who must make difficult decisions under difficult circumstances, such emergency powers are not an excuse to act unconstitutionally, to abuse power and the rule of law. At the same time, all of us—the judiciary, the other branches of government, and our fellow citizens—must insist that every action our governments take complies with the Constitution, especially now. If we tolerate unconstitutional government orders during an

emergency, whether out of expediency or fear, we abandon the Constitution at the moment we need it most.

When properly called upon, the judicial branch must not shrink from its duty to require the government's anti-virus orders to comply with the Constitution and the law, no matter the circumstances.

a. The Imposition of a Speech Code is Unconstitutional

Government coercion is presumptively unconstitutional when it compels people to speak things they do not want to speak. See *West Virginia State Board of Education v. Barnette* 319 U.S. 624 (more)63 S. Ct. 1178; 87 L. Ed. 1628; 1943 U.S. LEXIS 490; 147 A.L.R. 674 (1943) (compelled flag salute and pledge of allegiance).; *Wooley v. Maynard*, 430 U.S. 705 (1977). CLOSE (compelled display of state motto on license plate); *Agency for International Development v. Alliance for Open Society International, Inc*. S. Ct. 2321 (2013). (compelled statement of opposition to prostitution).

The Supreme Court's very first compelled speech case, *Barnette*, made clear that pure speech compulsions are often unconstitutional, even when they don't also function as speech restrictions. That case famously held that schoolchildren could not be required to pledge allegiance to the flag and to salute the flag. "[C]ompulsion . . . to declare a belief"—compelled "affirmation of a belief and an attitude of mind"—unconstitutionally violated the "individual freedom of mind." *Id.* at 631, 633, 637.

The much more recent *Alliance for Open Society* case echoes this as to organizations in rejecting a government requirement that organizations that seek government HIV-prevention funds officially take a stand opposing prostitution.

In *Wooley v. Maynard*, the Court also made clear that requiring people to display

ideological messages on their property ("Live Free or Die," the state motto) was similarly unconstitutional. *Id.* at 713. The government, the Court held, may not "require an individual to participate in the dissemination of an ideological message by displaying it on his private property in a manner and for the express purpose that it be observed and read by the public." For whatever reason, the issues of mask are very political and ideological. It should be noted that the State government and our Governor has taken no position on masks. Nor has the President of the United States. Governments throughout Europe have reopened, to include schools, and none are requiring masks to be worn. The science does not necessarily support the contention that wearing masks is effective. The Surgeon General of the United States, Dr. Anthony Fauci, and the CDC have all taken positions, both in the past and present, that wearing of masks should be dissuaded.[10] No matter the argument, the science of masks is not settled.[11] This is a policy decision of a local government, and subject to great debate. Speech should not an cannot be imposed.

b. Plaintiffs have a strong likelihood of success on the merits

In the instant case, the EO put forth by the EPG violates in every single respect these constitutional prohibitions by compelling speech. This is very dangerous and insidious invasion

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[10] US Surgeon General Jerome Adams argued against a nationwide mask mandate amid record increases of the novel coronavirus in the United States, arguing that such a mandate would lead to rebellion.

"Here's the challenge, if you make something mandatory, particularly for the younger age groups we are talking about, many of them will rebel and do the exact opposite," Adams said during an interview on NBC's "Today" show. "I think it's more important from a health perspective we help people understand why these are important and we help them understand why they benefit from wearing them."

[11] Two of the world's major health organizations disagree on mask wearing. The World Health Organization (WHO) currently discourages mask use:

> There is currently no evidence that wearing a mask (whether medical or other types) by healthy persons in the wider community setting, including universal community masking, can prevent them from infection with respiratory viruses, including COVID-19.

By contrast, the Centers for Disease Control and Prevention (CDC) in the United States has recently recommended everyone wear a (cloth) mask. However, this is to prevent infected people passing on the infection, not to prevent the wearer getting infected.

of personal rights protected by our Constitution. While this may come as some surprised to the elected official who compose the EPG, not everyone agrees with their policy proscriptions, and should not be compelled to broadcast speech to which they disagree to avoid civil and criminal penalties. This is the definition of coercion to impose speech and is unconstitutional.

5. THE EO AT ISSUE VIOLATES THE FLORIDA CONSTITUTION

Article I of the Florida constitution contains important provisions regarding the basic rights of all Florida citizens to be treated equally before the law and to have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. While there is no single, inflexible test by which our courts decide whether the requirements of procedural due process have been met, fundamentally it has been defined by the Courts to mean a structure of laws and procedures that hears before it condemns and proceeds upon inquiry and renders a judgment after trial.[12] Unfortunately, none of these fundamental requirements were met in the underlying Executive Orders.

The EPG EO violates the Plaintiffs' constitutional rights as protected in the Florida Constitution. Given that the State Legislature, has provided government with immense authority once a declared state of emergency is issued, the only bulwark to protect the citizens of the State of Florida from abuse of power is to be found in both the Florida and United States Constitution.

[12] *See Watson v. Pest Control* commission of Florida, 199 So2nd 777 (4th DCA, 1967). The constitutional guarantee of due process extends to every type of legal proceeding. *See Pelle v. Dinners Club*, 287 So2nd 737, (Fla. DCA 3rd Dist 1974); *Tomayko v. Thomas*, 143 So2nd 227 (Fla. 3rd DCA, 1962); *State ex rel. Barancik v. Gates*, 134 So2nd 497 (Fla. 1961); It cannot be simply ignored by labeling the proceedings as merely "quasijudicial" or administrative. Nor can it be merely colorable or illusory. See *Ryan's Furniture Exchange v. McNair*, 120 Fla 109, 162 So. 483 (1935). Nor can it be a mere sham or pretense, *Robbins v Robbins*, 429 So2nd 424, 3rd DCA (1983). As outlined in the case of *Neff v. Adler*, 416 So2nd 1240 at 1242-43 (Fla 4th DCA 1982) the fundamentals of procedural due process include a hearing before an impartial decision-maker, after fair notice of the charges and allegations with a fair opportunity to present one's own case. Fundamental due process includes the duty of the individual presiding over the hearing to apply a correct principle of law or rule, see *State v. Smith*, 118 So2nd 792 (Fla.1st DCA, 1960).

After Reconstruction was completed, the Florida Constitution has provided intrinsic and unalienable rights and liberties to its citizens. Chief among those rights and liberties are those found in Article 1 of the Florida Constitution.[13]

The penalties provisions found in the EPG EO threaten the Plaintiffs liberty for its violation, and penalties for speech that the Government does not approve. Article I, Section 9 of the Florida Constitution provides that "No person shall be deprived of life, liberty or property without due process of law…"[14] Similar to the First Amendment, the Florida constitution also protects speech where "[e]very person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press." Art. I, § 4, Fla. Const. (1968).

Requiring Plaintiffs to abstain from conducting lawful business in the State of Florida, despite other compliance measures being taken to satisfy the public health interests at stake,

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[13] Article 1, Sections 2, 6, 9, 10, 12, 21 and 23 the Florida Constitution provides, in pertinent part:

a. SECTION 2. Basic rights. —All-natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

b. SECTION 6. Right to work. —The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

c. SECTION 9. Due process. —No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

d. SECTION 10. Prohibited laws. —No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

e. SECTION 21. Access to courts. —The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

f. SECTION 23. Right of privacy. —Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

[14] See generally *Stromberg v. California*, 283 U.S. 259 (1931) (voided a state statute on grounds of its interference with free speech. State common law was also voided, with the Court in an opinion by Justice Black asserting that the First Amendment enlarged protections for speech, press, and religion beyond those enjoyed under English common law).

violates their Florida Constitutional liberty rights as found in Article I, section 2.[15] Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless the Governor is enjoined from implementing and enforcing the challenged Executive Orders.

D. THE MAINTENANCE OF THE PRIOR STATUS QUO IS JUSTIFIED AND NECESSARY WHILE THIS MATTER IS LITIGATED

The status quo prior to the EPG EO should be maintained while litigation is ongoing, that being that Plaintiffs be allowed to continue in their lawful pursuits absent the threat of arrest and/or confinement. Plaintiffs should continue to live peaceably, without fear of arrest or other harassment by the County, or any functionary assigned by the County to "enforce" or "inspect" the subject activities. Plaintiffs' other constitutional rights and the maintenance of the status quo require the issuance of an Injunction.[16]

In the instant action, the last "peaceable non-contested condition" that preceded this controversy was that the Plaintiffs were enjoying their rights to engage in both their business and property rights and the fruits of their pursuits, unencumbered by governmental interference. The

[15] Numerous cases support the conclusion that loss of customers, loss of goodwill, and threats to a business' viability can constitute irreparable harm. See *Tri State Generation v. Shoshone River Power, Inc*., 805 F.2d 351 (10th Cir. 1986); *Roso-lino Beverage Distributors, Inc. v. Coca Cola Bottling Co*., 749 F.2d 124, 125-26 (2d Cir. 1984); *Otero Savings & Loan Ass'n v. Federal Reserve Bank*, 665 F.2d 275, 278 (10th Cir. 1981); *Federal Leasing, Inc., v. Underwriters at Lloyd's*, 650 F.2d 495, 500 (4th Cir. 1981); *Valdez v. Applegate*, 616 F.2d 570, 572 (10th Cir. 1980); *John B. Hull, Inc. v. Waterbury Petroleum Products, Inc.,* 588 F.2d 24, 28-29 (2d Cir. 1978), cert. denied, 440 U.S. 960, 99 S.Ct. 1502, 59 L.Ed.2d 773 (1979); *Semmes Motors, Inc. v. Ford Motor Co*., 429 F.2d 1197, 1205 (2d Cir. 1970); Associated Producers Co. v. City of Independence, 648 F.Supp. 1255, 1258 (W.D. OH 1986); *Stanley Fizer Associates, Inc. v. Sport-Billy Productions Rolf Deyhle*, 608 F.Supp. 1033, 1035 (S.D. N.Y. 1985); *Great Salt Lake Minerals & Chemicals Corp. v. Marsh*, 596 F.Supp. 548, 557 (D.Utah 1984); and *Zurn Constructors, Inc. v. B.F. Goodrich Company*, 685 F.Supp. 1172 (D.Kan. 1988).

[16] ... The status quo preserved by a temporary injunction is the last peaceable non-contested condition that preceded the controversy. *Bowling v. National Convoy & Trucking Co*., 135 So. 541 (Fla. 1931). One critical purpose of temporary injunctions is to prevent injury so that a party will not be forced to seek redress for damages after they have occurred. *Lewis v. Peters*, 66 So.2d 489 (Fla. 1953). ... *Bailey v. Christo*, 453 So.2d 1134 (Fla. 1st DCA 1984).

status quo should be preserved by the issuance of an Injunction.

E. THE PUBLIC INTEREST AND "BALANCING TEST"

The Constitutions of the State of Florida and the United States are the ultimate expressions of the public interest. As a result, the Plaintiffs' rights to enjoy their constitutionally protected rights to conduct their lives free from government intrusion and interference, enjoy due process of law, and the numerous other rights articulated in the above sections cannot be lawfully abridged through the enforcement of the EPG EO. The greatest public interest lies in the freedoms and rights to due process guaranteed by the Constitution.[17] Therefore, the overall public interest is served by safeguarding these Constitutional freedoms and the right to due process.[18] Additionally, there are volumes of state statutes and regulations in place that can and are being used to regulate Plaintiffs. The Plaintiff's should not be burdened with enforcing an EO at the risk of being cited for criminal misconduct, so the "balancing test" clearly tilts in favor of the Plaintiffs. Accordingly,

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[17] ... Similarly, the public interest is served by any abatement of unconstitutional activity. *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062, 1071, (7th Cir. 1976). *Decker, supra* See, also, *DiDomenico v. Employers Cooperative Industry Trust*, 676 F.Supp. 903 (N.D. Ind. 1987) and *Zurn Constructors, supra*.

[18] Federal Courts have discussed the "balancing test" in the following fashion:

> ...Since the Court balances the evidence of each of those criteria by means of a sliding-scale analysis, a much stronger showing on one or more of the necessary factors lessens the amount of proof required for the remaining factors. Nevertheless, the principal and overriding prerequisite is irreparable harm resulting from the absence of an adequate remedy at law. [Citations omitted]
> … Because the Court has found that plaintiff has no genuine interest that is sustaining, or threatened with, irreparable injury, to warrant a preliminary injunction, the Court further concludes that *a fortiori* plaintiff cannot incur harm from the denial of an injunction that would outweigh any possible harm that defendants might suffer from issuing an injunction.

Jets Services, Inc. v. Hoffman, 420 F.Supp. 1300 (M.D. Fl. 1976).

> See also *Florida Medical Ass'n, Inc. v. U. S. Dept. of Health, Ed. and Welfare*, 601 F.2d 199 (5th Cir. 1979):
>
> We recognize that finding a "substantial likelihood that movant will ultimately prevail on the merits" does not contemplate a finding of fixed quantitative value. Rather, a sliding scale can be employed, balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits. *State of Texas v. Seatrain International, S.* A., 518 F.2d 175, 180 (5th Cir. 1975)' *Siff v. State Democratic Executive Committee,* 500 F.2d 1307 (5th Cir. 1974).

the requested Injunction should issue.

F. CONTINUING HARM AND THE RISK OF FUTURE HARM TO THE PLAINTIFFS

The EPG EO goes into immediate effect. As noted in the operative complaint, This EPG continues to violate the constitution in multiple ways, and shows no letup in the number of ways they intend to violate the constitutional rights of the citizens of this county. They appear to do so at the whim of whatever good idea comes to them, without going through the critical analysis of whether this idea is lawful. This organization has done this over and over and over again. Consider this history of this wayward group: First, the Safer-at-Home EPG edict, that made church attendance essentially illegal, resulted in the arrest of Pastor Rodney Browne of the River Church in Mango. This Pastor was the subject of a press conference led by the County Sherriff, and elected constitutional officer, and the elected State Attorney, who fund raised off this arrest.

Thereafter, this same EPG voted to implement a curfew. The Chairmen of the EPG went on TV telling people that walking their dogs would violate the Curfew.[19] Ironically, when the rule came out the next day, such conduct was permitted. The enormous confusion caused by the EPG, setting a curfew to go into effect three hours after it was passed, caused thousands of business to shutter early, unnecessarily. Thousands upon thousands of lives where disrupted. People lost

[19] As reported in the Tampa Bay Times on April 13, 2020, Les Miller, Chairman of the EPG, said police wouldn't arrest anyone for violating the curfew on Monday. No one with a legal reason to be out after curfew — such as going to work at a job deemed essential — would be required to have documentation proving it.

> It now appears that there is a disagreement or misunderstanding between the city of Tampa and Hillsborough County Les Miller. Miller (just now): "Walking the dog, jogging is not essential." City of Tampa has been tweeting those activities are allowed. @TB_Times — Charlie Frago (@CharlieFrago) April 14, 2020

Initially, in a post-meeting question-and-answer session with reporters, Miller said activities such as jogging or walking the dog would violate the curfew. When asked to clarify that Monday night, Miller said "walking the dog, jogging is not essential." See Tampa Bay Times: Hillsborough's curfew starts Monday night. But can you jog or walk the dog? April 13, 2020.

their jobs. After 72 hours, and under the threat of a lawsuit, the EPG repealed the curfew by a majority vote.

We now come forward to its newest edict that requires the wearing of facemasks, subject to the present lawsuit, and all the problems pointed out in the operative complaint. Rather than fixing the clear problems with their own EO as pointed out in this lawsuit, the EPG doubled down, going farther into the Constitutional mire, requiring compelled government speech in violation fo the First Amendment. "But like the poor marksmen, [they] keep missing the target".[20]

The fact that legislation of a penal nature would operate to deprive a person of due process does not, of itself, justify the invocation of the injunctive machinery in relation to that suit. However, ***when a criminal statute or ordinance is invalid, and its enforcement will result in injury to, or destruction of, property or personal rights, equity may intervene.*** Deeb v. Stoutamire, 53 So. 2d 873 (Fla. 1951); Metropolitan Dade County v. Florida Processing Co., 218 So. 2d 474 (Fla. Dist. Ct. App. 3d Dist. 1969)(emphasis added). [21]

Equally as dominant as a "general rule" is the fact that the injunctive remedy is appropriate, on proper showing of injury, to ***restrain the enforcement of an invalid law.*** *Daniel v. Williams*, 189 So. 2d 640 (Fla. Dist. Ct. App. 2d Dist. 1966); *Board of Com'rs of State Institutions v. Tallahassee Bank & Trust Co.*, 100 So. 2d 67 (Fla. Dist. Ct. App. 1st Dist. 1958)(emphasis added). The injury may consist in the infringement of a property right. See *Louisville & N.R. Co. v. Railroad Com'rs*, 63 Fla. 491, 58 So. 543 (1912). It may also exist in the right to earn a livelihood and continue in one's employment. *Watson v. Centro Espanol De Tampa*, 158 Fla. 796, 30 So. 2d 288 (1947). Persons who are the subject of harassment by overzealous, improper, or bad-faith use

[20] Quoting Captain James T. Kirk, to Khan: The Wrath of Khan, Universal Pictures (1982).

[21] The circumstances must be exceptional and the danger of irremediable loss must be great and immediate. Pohl Beauty School v. City of Miami, 118 Fla. 664, 159 So. 789 (1935). Both conditions are present in this action.

of valid statutes may be afforded the protection of injunctive relief. *Kimball v. Florida Dept. of Health and Rehabilitative Services*, 682 So. 2d 637 (Fla. Dist. Ct. App. 2d Dist. 1996). The instant action manifests all these components.

It is simply not unreasonable to say at this point, given this history, that the EPG is completely lost and totally out of control. It is far past time for this Honorable Court to put them out of their misery. A good start would be the granting of this motion which is patently obvious to anyone other than those who sit on the EPG.

CONCLUSION

Plaintiffs have demonstrated their entitlement to a preliminary injunction under Federal and Florida law. As shown herein, Plaintiffs will suffer irreparable harm if injunctive relief is not granted. As a matter of law, there is no adequate remedy at law for the current and continued deprivation of their constitutional rights and Plaintiffs have a clear legal right to the relief requested and a substantial likelihood of success on the merits in this action. Nothing is mooted by the actions of the BOCC as the Plaintiffs are still on unequal footing and subject to the subjugation of their constitutional rights by an illegally formed and unconstitutionally established EPG.

Most importantly, the public interest demands the preservation of constitutional rights and representation by the people in law-making by the officials they elect for this function. Accordingly, this Court is requested to hold an appropriate hearing and GRANT this Motion for Preliminary Injunction enjoining the challenged provisions of the EPG EO against the Plaintiffs until such time as a full evidentiary hearing can be held on the issuance of a permanent injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing was filed with the Clerk of the Court and was sent via U.S. Mail to the Hillsborough County Attorney Office at 601 E. Kennedy Blvd., 27th Floor Tampa, FL 33602, and ECM to the Hillsborough County Attorney Office on this 17th day of July 2020.

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